

Introduced by Senator Corbett

January 13, 2009

An act to add Section 13957.3 to the Government Code, and to amend Sections 13823.95 and 13823.11 of the Penal Code, relating to victims of sexual assault.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as introduced, Corbett. Victims of sexual assault.

Existing law authorizes state compensation for victims of crime, as specified.

This bill would additionally authorize state payment of claims by medical providers for the costs of a forensic exam for a victim of a sexual assault, as specified.

Existing law provides that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the forensic examination of the victim of a sexual assault for the purposes of gathering evidence for possible prosecution shall be charged directly or indirectly to the victim of the assault. Existing law requires those costs be treated as local costs and charged to the local governmental agency in whose jurisdiction the alleged offense was committed.

This bill would prohibit charging the victim of a sexual assault for the costs of medical treatment, as specified. The bill would require that bills for the costs of those forensic examinations and that medical treatment be submitted to the California Victim Compensation and Government Claims Board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13957.3 is added to the Government
2 Code, to read:

3 13957.3. Notwithstanding any other provisions of this article,
4 the board shall pay claims submitted by medical providers for the
5 costs of forensic examinations for victims of sexual assault, unless
6 an alternative source of payment is available.

7 SEC. 2. Section 13823.95 of the Penal Code is amended to
8 read:

9 13823.95. No costs incurred by a qualified health care
10 professional, hospital, or other emergency medical facility for the
11 examination of the victim of a sexual assault, as described in the
12 protocol developed pursuant to Section 13823.5, when the
13 examination is performed, pursuant to Sections 13823.5 and
14 13823.7, for the purposes of gathering evidence for possible
15 prosecution, *or for medical treatment*, shall be charged directly or
16 indirectly to the victim of the assault. ~~Those costs shall be treated~~
17 ~~as local costs and charged to the local governmental agency in~~
18 ~~whose jurisdiction the alleged offense was committed.~~

19 Bills for these costs shall be submitted to the *California Victim*
20 *Compensation and Government Claims Board. Collection and*
21 *retention of any evidence gathered during the examination of a*
22 *victim of a sexual assault shall be the responsibility of the law*
23 *enforcement agency in the jurisdiction in which the alleged offense*
24 *was committed which requests the examination.*

25 The law enforcement agency in the jurisdiction in which the
26 alleged offense was committed which requests the examination
27 has the option of determining whether or not the examination will
28 be performed in the office of a physician and surgeon.

29 SEC. 3. Section 13823.11 of the Penal Code is amended to
30 read:

31 13823.11. The minimum standards for the examination and
32 treatment of victims of sexual assault or attempted sexual assault,
33 including child molestation and the collection and preservation of
34 evidence therefrom include all of the following:

35 (a) Law enforcement authorities shall be notified.

36 (b) In conducting the physical examination, the outline indicated
37 in the form adopted pursuant to subdivision (c) of Section 13823.5
38 shall be followed.

1 (c) Consent for a physical examination, treatment, and collection
2 of evidence shall be obtained.

3 (1) Consent to an examination for evidence of sexual assault
4 shall be obtained prior to the examination of a victim of sexual
5 assault and shall include separate written documentation of consent
6 to each of the following:

7 (A) Examination for the presence of injuries sustained as a result
8 of the assault.

9 (B) Examination for evidence of sexual assault and collection
10 of physical evidence.

11 (C) Photographs of injuries.

12 (2) Consent to treatment shall be obtained in accordance with
13 usual hospital policy.

14 (3) A victim of sexual assault shall be informed that he or she
15 may refuse to consent to an examination for evidence of sexual
16 assault, including the collection of physical evidence, but that a
17 refusal is not a ground for denial of treatment of injuries and for
18 possible pregnancy and sexually transmitted diseases, if the person
19 wishes to obtain treatment and consents thereto. *No costs incurred*
20 *by a qualified health care professional, hospital, or other*
21 *emergency medical facility for the treatment of a victim of a sexual*
22 *assault shall be charged directly or indirectly to the victim of a*
23 *sexual assault.*

24 (4) Pursuant to Chapter 3 (commencing with Section 6920) of
25 Part 4 of Division 11 of the Family Code, a minor may consent to
26 hospital, medical, and surgical care related to a sexual assault
27 without the consent of a parent or guardian.

28 (5) In cases of known or suspected child abuse, the consent of
29 the parents or legal guardian is not required. In the case of
30 suspected child abuse and nonconsenting parents, the consent of
31 the local agency providing child protective services or the local
32 law enforcement agency shall be obtained. Local procedures
33 regarding obtaining consent for the examination and treatment of,
34 and the collection of evidence from, children from child protective
35 authorities shall be followed.

36 (d) A history of sexual assault shall be taken.

37 The history obtained in conjunction with the examination for
38 evidence of sexual assault shall follow the outline of the form
39 established pursuant to subdivision (c) of Section 13823.5 and
40 shall include all of the following:

1 (1) A history of the circumstances of the assault.

2 (2) For a child, any previous history of child sexual abuse and
3 an explanation of injuries, if different from that given by parent
4 or person accompanying the child.

5 (3) Physical injuries reported.

6 (4) Sexual acts reported, whether or not ejaculation is suspected,
7 and whether or not a condom or lubricant was used.

8 (5) Record of relevant medical history.

9 (e) (1) If indicated by the history of contact, a female victim
10 of sexual assault shall be provided with the option of postcoital
11 contraception by a physician or other health care provider.

12 (2) Postcoital contraception shall be dispensed by a physician
13 or other health care provider upon the request of the victim.

14 (f) Each adult and minor victim of sexual assault who consents
15 to a medical examination for collection of evidentiary material
16 shall have a physical examination which includes, but is not limited
17 to, all of the following:

18 (1) Inspection of the clothing, body, and external genitalia for
19 injuries and foreign materials.

20 (2) Examination of the mouth, vagina, cervix, penis, anus, and
21 rectum, as indicated.

22 (3) Documentation of injuries and evidence collected.

23 Prepubertal children shall not have internal vaginal or anal
24 examinations unless absolutely necessary. This does not preclude
25 careful collection of evidence using a swab.

26 (g) The collection of physical evidence shall conform to the
27 following procedures:

28 (1) Each victim of sexual assault who consents to an examination
29 for collection of evidence shall have the following items of
30 evidence collected, except where he or she specifically objects:

31 (A) Clothing worn during the assault.

32 (B) Foreign materials revealed by an examination of the
33 clothing, body, external genitalia, and pubic hair combings.

34 (C) Swabs and slides from the mouth, vagina, rectum, and penis,
35 as indicated, to determine the presence or absence of sperm and
36 sperm motility, and for genetic marker typing.

37 (D) If indicated by the history of contact, the victim's urine and
38 blood sample, for toxicology purposes, to determine if drugs or
39 alcohol were used in connection with the assault. Toxicology
40 results obtained pursuant to this paragraph shall not be admissible

1 in any criminal or civil action or proceeding against any victim
2 who consents to the collection of physical evidence pursuant to
3 this paragraph. Except for purposes of prosecuting or defending
4 the crime or crimes necessitating the examination specified by this
5 section, any toxicology results obtained pursuant to this paragraph
6 shall be kept confidential, may not be further disclosed, and shall
7 not be required to be disclosed by the victim for any purpose not
8 specified in this paragraph. The victim shall specifically be
9 informed of the immunity and confidentiality safeguards provided
10 herein.

11 (2) Each victim of sexual assault who consents to an examination
12 for the collection of evidence shall have reference specimens taken,
13 except when he or she specifically objects thereto. A reference
14 specimen is a standard from which to obtain baseline information
15 (for example: pubic and head hair, blood, and saliva for genetic
16 marker typing). These specimens shall be taken in accordance with
17 the standards of the local criminalistics laboratory.

18 (3) A baseline gonorrhea culture, and syphilis serology, shall
19 be taken, if indicated by the history of contact. Specimens for a
20 pregnancy test shall be taken, if indicated by the history of contact.

21 (4) (A) If indicated by the history of contact, a female victim
22 of sexual assault shall be provided with the option of postcoital
23 contraception by a physician or other health care provider.

24 (B) Postcoital contraception shall be dispensed by a physician
25 or other health care provider upon the request of the victim.

26 (h) Preservation and disposition of physical evidence shall
27 conform to the following procedures:

28 (1) All swabs and slides shall be air-dried prior to packaging.

29 (2) All items of evidence including laboratory specimens shall
30 be clearly labeled as to the identity of the source and the identity
31 of the person collecting them.

32 (3) The evidence shall have a form attached which documents
33 its chain of custody and shall be properly sealed.

34 (4) The evidence shall be turned over to the proper law
35 enforcement agency.